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In the Supreme Court of the United States

OCTOBER TERM, 1952

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UNITED STATES OF AMERICA, PETITIONER

v.

PATRICIA J. REYNOLDS, PHYLLIS BRAUNER, AND
ELIZABETH PALYA

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 638

UNITED STATES OF AMERICA, PETITIONER

v.

PATRICIA J. REYNOLDS, PHYLLIS BRAUNER, AND
ELIZABETH PALYA

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Third Circuit entered in the above case on December 11, 1951.

OPINIONS BELOW

The opinion of the District Court for the Eastern District of Pennsylvania (R. 22) is reported at 10 F.R.D. 468. The opinion of the Court of Appeals for the Third Circuit (R. 52) is reported at 192 F. 2d 987.

JURISDICTION

The judgments of the Court of Appeals for the Third Circuit were entered on December 11, 1951 (R. 67-68). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

In suits under the Tort Claims Act respondents sought discovery, under Rule 34 of the Federal Rules of Civil Procedure, of accident investigation reports prepared by the Air Force. The Secretary of the Air Force filed a claim of privilege in the District Court on the ground that the disclosure of the reports would seriously hamper national security and flying safety as well as the development of highly technical military equipment, and would discourage uninhibited statements by witnesses in the course of such investigations. The District Court nevertheless ordered the reports produced so that it might review the claim of privilege, and when the Secretary declined to produce them, ordered that respondents' version of the facts on the issue of negligence be taken as established. The Court of Appeals affirmed. The questions presented are:

1. Whether the Secretary's determination that the documents are privileged can, consistently with R.S. 161 and the doctrine of separation of powers, be reviewed by the judiciary.
2. Whether Congress in the Tort Claims Act could or intended to force the executive to submit

to judicial review of his determination or suffer judgment to be entered against the United States.

3. Whether the validity of the Secretary's determination can be tested in this case in the absence of the issuance of direct process against him.

STATUTES, FEDERAL RULES, AND REGULATIONS INVOLVED

The pertinent portions of R.S. 161, 5 U.S.C. 22, the Federal Tort Claims Act (28 U.S.C. 2674), Rules 34 and 37 of the Federal Rules of Civil Procedure, Air Force Regulation Nos. 62-14, 62-14A, and 62-7, Joint Army and Air Force Adjustment Regulations No. 1-11-60, and Army Regulation No. 420-5 are set forth in the Appendix at pp. 17-30.

STATEMENT

These suits under the Tort Claims Act arise from the death of three civilians in the crash of a B-29 aircraft at Waycross, Georgia on October 6, 1948. The basic facts, which are not in dispute, are as follows: The aircraft, carrying nine crew members and four civilian observers, had taken off from Robbins Air Force Base on a flight to Orlando, Florida, for the purpose of an experimental testing of secret electronics equipment (R. 52). Of the thirteen persons aboard ship, nine were killed, including six members of the crew and three civilian observers, who were engineer employees of the contractor and subcontractor involved in the research and development of the electronics equipment being tested (R. 52). These suits were

instituted in the Eastern District of Pennsylvania by respondents, the widows of the three deceased civilian employees, each suit asking for \$300,000 damages for the wrongful deaths of the deceased (R. 52).

Following the institution of the suits and the filing by the Government of a general denial, respondents moved under Rule 34 of the Federal Rules of Civil Procedure for production of the official accident investigation report prepared by officers of the Air Force, and the statements of the surviving crew members¹ taken in connection with that investigation (R. 19-21). The Government moved to quash the motion, chiefly on the ground that the accident investigation report was privileged pursuant to Air Force regulations promulgated under R.S. 161, 5 U.S.C. 22 (R. 22).

On June 30, 1950, Judge Kirkpatrick sustained plaintiffs' motion to produce (R. 2), holding that good cause for production had been shown under Rule 34 (R. 26) and on the privilege question adhering to the views which he had expressed in *O'Neill v. United States*, 79 F. Supp. 827 (R. 26). An order to produce was then entered (R. 2).

Subsequent to that order, a letter from the Secretary of the Air Force was presented to Judge

¹ Respondents first submitted detailed interrogatories under Rule 33, which asked *inter alia* for copies of any accident investigation report and for the statements of survivors. The answer to the interrogatories declined to comply with the demand for production on the ground that such a production was not within the scope of Rule 33.

Kirkpatrick. The letter stated that it was not in the public interest to furnish the accident investigation report, and that such reports were prepared under controlling regulations designed to collect information for the development of measures to prevent accidents and to promote flying safety. The matter was stated to be one of primary importance to the Air Force and it was pointed out that such aircraft accident reports were restricted to the official purposes for which they were intended, not being available in any form for disciplinary action or for the determination of pecuniary liability.²

Subsequent to this letter, a rehearing was held on August 9, 1950 (R. 2), on respondents' motion for production of documents. At this hearing, the district judge received a "formal claim of privilege"

² The pertinent portion of the letter is as follows. (R. 53-54):

"Acting under the authority of Section 161 of the Revised Statutes (5 U.S.C. 22), it has been determined that it would not be in the public interest to furnish this report of investigation as requested by counsel in this case. This report was prepared under regulations which are designed to insure the collection of all pertinent information regarding aircraft accidents in order that all possible measures will be developed for the prevention of accidents and the optimum promotion of flying safety. Because this matter is one of such primary importance to the Air Force, it has been found necessary to restrict the use of aircraft accident reports to the official purpose for which they are intended. Under our regulations, this type of report is not available in courts-martial proceedings or other forms of disciplinary action or in the determination of pecuniary liability.

"It is hoped that the extreme importance which the Department of the Air Force places upon the confidential nature of its official aircraft accident reports will be fully appreciated and understood by your Honorable Court."

(R. 28) by the Secretary of the Air Force, setting forth the basis for the claim and the authority for the privilege, supported by an affidavit of the Secretary showing his right to promulgate regulations under R.S. 161 and describing the applicable regulations (R. 32).. In addition, an affidavit by the Air Force Judge Advocate General was filed (R. 34) which set forth the names and addresses of the survivors, undertook to make those witnesses available for interrogation at government expense, and guaranteed to authorize the witnesses to testify to all matters pertaining to the cause of the accident, except as to classified material. Further, the affidavit of the Judge Advocate General, after pointing out that all records other than those classified or privileged had already been made available to the plaintiffs, specifically stated that the investigation board report and survivors' statements could not be furnished without seriously hampering national security, flying safety, and the development of highly technical military equipment.

The District Court, on September 21, 1950, ordered the Government to produce the documents in question for examination so that the court could determine whether disclosure "would violate the Government's privilege against disclosure of matters involving the national or public interest" (R. 36). The Government declined to comply with this order, and on October 12, 1950, the District

Court ordered that the facts in respondents' favor on the issue of negligence be taken as established (R. 37).³ Subsequently, a hearing was held on the question of damages and judgment was entered for respondents on February 27, 1951 (R. 41-42).⁴

On appeal, the Court of Appeals affirmed. The court dealt only briefly with the question of "good cause" and concluded that it could not find error in the district judge's decision (R. 56). On the privilege issue, the court first outlined what it conceived to be the question before it. It declared that the cases of *Boske v. Comingore*, 177 U.S. 459, and *Touhy v. Ragen*, 340 U.S. 462, were not in point, because these suits were against the United States and, therefore, if the United States as a party defendant could properly be ordered to produce the documents, the Secretary of the Air Force was clearly required to comply (R. 57). On the same rationale, it disposed of what it described as "difficult constitutional questions" which might

³ Rule 37(b)(2) of the Federal Rules provides that, if a party refuses to comply with an order under Rule 34 to produce documents, the court may make "An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order," as well as an order "refusing to allow the disobedient party to support or oppose designated claims or defenses * * *"

⁴ The court awarded \$80,000 in the *Palya* case and the *Brauner* case, and \$65,000 in the *Reynolds* case. The amount of damages was not challenged in the Court of Appeals and is not in issue here.

arise if enforcement of the District Court's order to produce had been sought by subpoena and avoided any question of the validity of the regulations promulgated by the Secretary with respect to the custody and production of the Department's papers (R. 57-58).

The question of the propriety of the order against the United States, as a party defendant, was resolved by the Court of Appeals solely with reference to the Tort Claims Act. It relied heavily on the provision of that Act that the United States "shall be liable. * * * in the same manner and to the same extent as a private individual under like circumstances" and the fact that the Act made the Federal Rules of Civil Procedure applicable to suits thereunder.

The court then went on to consider the propriety of the Government's claim of privilege in these cases. It refused to recognize the claim of privilege based on the desire to encourage "uninhibited admissions" (R. 35) by witnesses in the course of accident investigations, declaring that such an absolute "housekeeping" privilege would be contrary to public policy (R. 60, 61). By analogy to criminal cases, the court held that the Government in tort cases can either choose to produce documents, or, if it feels the public policy against disclosure is sufficiently strong, to suffer judgment to be entered for the plaintiffs. On the claim of privilege against disclosure of military secrets,

it was held that such a claim of privilege involved a justiciable question to be determined by the district judge after examination *in camera* (R. 63).

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it erroneously interprets the Tort Claims Act so as to disrupt the orderly administration of the executive departments and to permit encroachment by the judiciary on an area committed by the Constitution to executive discretion. Either the decision below is in conflict with the decisions of this Court in *Boske v. Comingore*, 177 U.S. 459, and *Touhy v. Ragen*, 340 U.S. 462, or, if it is not so in conflict, the "issues of far-reaching importance"⁵ left undecided in those cases must be faced. In either event, this Court should grant review.

1. As we note below (*infra*, pp. 14-15), it is questionable whether under *Boske v. Comingore*, *supra*, and *Touhy v. Ragen*, *supra*, the validity of the determination of the Secretary of the Air Force, that disclosure of the documents sought would not be consistent with the public interest, can be tested in the absence of direct process against the Secretary, which was not had in this case.

But if the court below held correctly that the Secretary's determination can be challenged indirectly in a suit under the Tort Claims Act, then there are presented many of the questions which

⁵ *Touhy v. Ragen*, 340 U.S. 462 at 470 (Mr. Justice Frankfurter concurring).

the Court found it unnecessary to face in *Touhy v. Ragen, supra*. The procedural problem aside, the vital questions remain of the power of the judiciary to order production of documents which the executive chooses to withhold, or to substitute its judgment for the judgment of the executive as to whether certain documents can be disclosed consistently with the public interest. Those questions have twice recently been before the Court but have not been decided. Our arguments stemming from R.S. 161 and the Constitution were fully briefed and presented orally in *Touhy v. Ragen, supra*, and *United States v. Cotton Valley Operators Committee*, 339 U.S. 940.⁶ Those arguments will not again be spelled out here. They are perhaps best summarized by the following quotation from 40 Op. A.G. 45, 49:

This discretion in the executive branch has been upheld and respected by the judiciary. The courts have repeatedly held that they will not and cannot require the executive to produce such papers when in the opinion of the executive their production is contrary to the public interests. The courts have also held that the question whether the production of the papers would be against the public interest is one for the executive and not for the courts to determine.

⁶ See Brief for the United States, No. 490, October Term, 1949, at pp. 29-64 (*Cotton Valley* case), and Brief for the Respondent George R. McSwain, No. 83, October Term, 1950, at pp. 18-44 (*Touhy* case).

2. The court below sought to avoid the questions raised by R.S. 161 and the "difficult constitutional questions" (R. 58) arising out of the separation-of-powers doctrine solely by reliance on the Tort Claims Act. Because that Act made the United States liable "as a private individual under like circumstances" (28 U.S.C. 2674), and made the Federal Rules of Civil Procedure applicable to tort actions against the United States (*United States v. Yellow Cab Company*, 340 U.S. 543, 553), the court concluded that Congress had "withdrawn" the executive privilege (R. 58) and that the Secretary of the Air Force must obey an order directed against the United States as a party defendant or permit judgment to be entered against "the Government." But the fundamental questions cannot be so easily avoided.

Insofar as the executive privilege is statutory in origin, the court below failed to accord to R.S. 161 the weight to which a statute of such long standing is ordinarily entitled. The Act has been consistently construed as confirming in the executive the discretion to refuse to produce documents when he believes disclosure is contrary to the public interest. "We cannot impute to Congress such a radical departure from established law in the absence of express congressional command" (*Feres v. United States*, 340 U.S. 135, 146). Cf. *Inland Waterways Corp. v. Young*, 309 U.S. 517; *Commissioner v. South Texas Company*, 333 U.S. 496, 502-3. The

Tort Claims Act is certainly not such an express command. It is not enough to say, as did the court below, that the Act intended the United States to be suable in every respect as a private party. There are areas, such as that involved here, where the United States cannot be analogized to a private party. Cf. *Feres v. United States, supra*. In those areas, Congress cannot be deemed to have intended the courts to treat "the Government" mechanically as any private party.

That Congress did not so intend becomes even clearer when we consider that its power to do so is of dubious constitutionality. If the executive privilege stems, as we believe, directly from the basic premise of separate but equal branches of the Government, Congress can no more take away that privilege by statute than can the courts by judicial decision. And it is very questionable whether Congress can force the executive either to submit to judicial review of its determination or to permit judgment to be entered against the Government. But even if the doubtful constitutional questions be resolved in favor of the power of Congress in this area, the exercise of such power constitutes an extraordinary invasion of the province of the executive. The court below failed completely to show that such an invasion was intended by Congress.

The Court of Appeals also supported its conclusion by drawing an analogy between the position of the executive in cases of this sort and the position of the Government in criminal cases, where it has

been held by lower courts that the Government cannot refuse to disclose the contents of documents relevant to the defense and at the same time continue the prosecution. The analogy is not apt. The principles which underlie our system of criminal jurisprudence dictate that the accused be given all reasonable aids to his defense. The constitutional bias against conviction of innocent men is so strong that it is not unreasonable to require the prosecuting arm of the Government to choose between allowing possibly guilty men to escape or disclosing information which is necessary to the defense of the accused. There is no such constitutional basis in favor of a civil claimant against the Government—whom Congress need not even permit to litigate—and the considerations of public policy which underlie the executive discretion to refuse disclosure should not be sacrificed in the interests of making such civil claims more easily prosecuted.

The Secretary here offered to make all witnesses available to respondents at government expense, and to authorize them to testify as to all material not classified. It may be, as the District Court found here, that a plaintiff would fare better if he obtained the documents sought, and that "good cause" for their production could be shown.⁷ We believe, however, that plaintiffs, even under the

⁷ The District Court found that good cause for the production of documents had been shown. The Court of Appeals affirmed. We do not urge the holding of good cause as a reason for granting the writ, but we reserve the right to raise the question in the event this petition is granted.

Tort Claims Act, must sometimes sue the United States at a disadvantage. In any event, the choice—between making the task of plaintiffs somewhat more difficult and permitting an invasion of the integrity of the executive departments—is one for this Court to make.

3. In *Boske v. Comingore*, 177 U.S. 459, and *Touhy v. Ragen*, 340 U.S. 462, the Court held that, where production of departmental documents⁸ is declined by virtue of orders of heads of departments issued pursuant to R.S. 161 (5 U.S.C. 22), the validity of that action cannot be challenged except by direct process against the head of the department. The court below held, however, that in this case direct process need not be issued against the Secretary of the Air Force because the suit was against the United States and the Secretary was bound to obey an order issued against the United States as a party defendant. We believe, however, that the requirement of the *Boske* and *Touhy* cases was more than merely technical and cannot be avoided simply because the United States is the party defendant. We submit that those cases require that, after the decision by the head of the department, the issue of the validity of his decision

⁸ In *Boske v. Comingore*, *supra*, the court sought to force the production by a Collector of Internal Revenue of distillers' reports in his possession. In *Touhy v. Ragen*, *supra*, the papers sought were in the custody of the United States Attorney. In both cases, departmental regulations forbade the production of such documents except in the discretion of the head of the department.

should be tested directly. Here, for example, proceedings should have been instituted under Rules 26 and 45 to bring the Secretary of the Air Force squarely before the court. If such a procedure were followed, final decision on the propriety of his action would permit both parties to the case to proceed to the merits, either with or without the disclosure requested.

4. The questions presented by this case are of great and recurring significance in the administration of the Tort Claims Act and elsewhere.⁹ The important nature of these issues has already been recognized by this Court as recently as *Touhy v. Ragen*, *supra*. The serious questions of public policy involved here and the effect of the decision below, if unreversed, upon the historic division of responsibility among the various branches of our Government make this case a peculiarly appropriate one for the exercise of this Court's discretionary jurisdiction.


⁹ The issue, in one facet or another, has been present in the *Cotton Valley* and *Touhy* cases, in the lower courts in *Mandel v. United States*, No. 414, this Term (pending before this Court on another issue), in *O'Neill v. United States*, 79 F. Supp. 827 (E.D. Pa.), *Bank Line Limited v. United States*, 68 F. Supp. 587, 76 F. Supp. 801 (S.D. N.Y.), 163 F. 2d 133 (C.A. 2), and *Allmont v. United States*, 177 F. 2d 971 (C.A. 3)—to mention only recent reported cases. See also Brief for the United States in the *Cotton Valley* case, No. 490, Oct. Term, 1949, at p. 59.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

MARCH 1952.



APPENDIX

Section 161 of the Revised Statutes, 5 U. S. C. 22, provides:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

28 U. S. C. 2674 provides in pertinent part as follows:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

3. Rule 34 of the Federal Rules of Civil Procedure, as amended, provides:

Discovery and Production of Documents and Things for Inspection, Copying, or Photographing. Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30 (b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers,

books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26 (b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by Rule 26 (b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

4. Rule 37. *Refusal to Make Discovery: Consequences.*

(b) Failure to Comply with Order.

(2) *Other Consequences.* If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical or mental examination, the court

may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

5. AF Regulation No. 62-14.

Headquarters, Army Air Forces

Washington, 20 October 1944

FLYING SAFETY

Investigation and Reporting of Aircraft Accidents Emergency Procedures for Accidents and Overdue Aircraft (Clearance Nos. AAF-FS-T8 and AAF-FS-T9).

(This Regulation supersedes AAF Regulations 62-14, 26 May 1942, 62-14A, 28 January 1944, and 15-14, 7 September 1942).

* * * * *

PART FOUR

INVESTIGATION AND REPORTING

* * * * *

SECTION II—APPOINTMENT OF AIRCRAFT ACCIDENT INVESTIGATING BOARDS AND OFFICERS

40. *Appointment of Aircraft Accident Investigating Boards.* The Commanding officer of each AAF station will appoint one or more Aircraft Accident Investigating Boards to conduct investigations required of such boards by this Regulation.

a. Three (3) officers will be appointed to constitute each board. Of the three (3) members, two, (2) will be pilot officers possessing outstanding experience or other qualifications warranting such appointment; and the other will be that available officer present possessing the widest engineering experience or training. The station commanding officer is authorized to appoint board members from the officer personnel of all organizations regularly based at or attached to his station as well as from officer personnel under his command.

b. Alternate members, similarly qualified, will be appointed for board members, and, in the absence of any board members, may be detailed by the senior member of the board present to perform the duties of the absent members.

c. All members of such boards, or alternates when serving, will personally engage in the required investigations and assist in the preparation of the required reports.

d. Ex-officio, non-voting members,

(1) (a) Representatives of Headquarters AAF, Office of Flying Safety are authorized and empowered to, and may, when so directed:

(1) Act as ex-officio and non-voting members of Aircraft Accident Investigating Boards and exercise technical supervision over and review the activities of the Board and the Station Accident Officer.

(2) Submit separate reports through channels or direct, concurring or dissenting from the reports of boards or accident officers.

(3) Conduct independent investigations of the aircraft accidents and "missing" aircraft with which this Regulation is concerned, including investigation of conditions at installations relating to or resulting in such accidents or "missing" aircraft.

(b) Commanding Officers will render full assistance as requested by such representatives of the Office of Flying Safety

and will furnish to them such transportation, clerical help, military personnel, etc., as may be required.

(2) The intelligence officer of the station will serve as an ex-officio, non-voting member of the board but otherwise with full authority of a board member and with the particular responsibility to determine whether the available evidence has disproved the existence of sabotage. He will have full authority to make separate intelligence investigations and reports on any accident, and all such activity undertaken by the intelligence officer, or Counter Intelligence Corps personnel under his direction, will be conducted in strict compliance with the provisions of TM 30-218 and such other policies and directives as may be issued by G-2, War Department General Staff, or AC/AS, Intelligence. When the intelligence officer of the station is unable to serve with the board, the commanding officer of the station will appoint the senior intelligence officer available to act as the intelligence, ex-officio, non-voting member of the board.

(3) The senior medical officer of the station will recommend a medical officer, preferably a Flight Surgeon or Aviation Medical Examiner, who will serve as an ex-officio, non-voting member of the board but otherwise with full authority of a board member and with additional authority and responsibility to make

separate reports for medical channels. The senior medical officer of the station will also recommend an alternate medical officer who will act in the absence of the medical officer member.

* * * * *

SECTION III—INVESTIGATIONS AND REPORTS

* * * * *

46. *Purpose of Investigation—Not Investigation Under the 70th Article of War.* Witnesses appearing before an Aircraft Accident Investigating Board or officer conducting an investigation required by this Regulation should be advised that such investigation is not one conducted under the 70th Article of War and that the purpose of such investigation is not to secure evidence for disciplinary action but to determine all factors in connection with accidents involving aircraft and to prevent recurrence of same in the interest of flying safety.

47. *Attachments:*

a. Personnel required herein to conduct investigations and submit reports are authorized to obtain from any AAF personnel, including surviving crew members, operations officers, engineering officers, weather personnel, tower operators, inspectors, post engineers, medical officers, civilian agencies contracting with, or civilians employed by the War Department, etc., information, data, and records, which may be of aid in completing such investigations and reports, and will attach same to AAF Forms 14 when

applicable as provided in the Aircraft Accident Investigators' Handbook. Station Accident Officers are specifically authorized to obtain information, data, and opinions from the medical officer member of the local Aircraft Accident Investigating Board.

6. Amendment, AF Regulation No. 62-14A

Headquarters, Army Air Forces

Washington, 26 February 1947

* * * * *

FLYING SAFETY

Investigation and Reporting of Aircraft Accidents Emergency Procedures for Accidents and Overdue Aircraft.

(This Regulation supersedes AAF Regulation 62-14A, 4 January 1946; and amends AAF Regulation 62-14, 20 October 1944.)

* * * * *

46. *Purpose and Nature of Investigation:*

a. Witnesses appearing before an aircraft accident investigating board or officer conducting an investigation required by this Regulation will be advised:

(1) That the purpose of the investigation is to determine all factors in connection with the accident and to prevent a recurrence of the accident in the interest of flying safety.

(2) That it is not for the purpose of obtaining evidence for disciplinary action, for determining liability or line-of-duty status, or for reclassification.

(3) That it is not conducted under the 70th Article of War.

b. When disciplinary action, action to determine pecuniary liability, or line-of-duty status of any military personnel, or action to initiate reclassification is indicated as a result of an aircraft accident:

(1) Any investigation leading toward disciplinary action, whether conducted under the 70th Article of War or otherwise, or toward determining pecuniary liability or line-of-duty status, or toward reclassification, will be entirely separate and apart from the investigation required by this Regulation.

(2) The report of investigation required herein (AAF Form 14, or 14A, with attachments) will not be used in any manner in connection with any investigation or proceeding leading toward disciplinary action, determination of pecuniary liability or line-of-duty status, or reclassification.

* * * * *

IRA C. EAKER,

*Lieutenant General, United
States Army,*

Deputy Commander, Army Air Forces.

OFFICIAL:

H. G. CULTON,

Colonel, Air Corps

Air Adjutant General.

7. AF Regulation, No. 62-7.

Department of the Air Force Headquarters,
United States Air Force, Washington
17 December 1947

FLYING SAFETY

Safeguarding Aircraft Accident Information

(This Regulation supersedes AF Letter 62-7,
19 September 1944).

1. *Definitions.* For the purpose of this Regulation the following definitions will apply.

a. *"Extract of a Report"*—is a summary, excerpt, quotation, or condensation of the report which contains the time or place of the incident, names of the persons involved, or aircraft serial number.

b. *"Officials in the Authorized Chain of Command"*—are commanders and individuals under their command at all echelons in the National Military Establishment whose official duties in connection with aircraft accident prevention require knowledge or possession of accident information.

2. *General.* Reference is made to AR's 95-120, 380-5, and 420-5; AF Regulations 46-17, 47-4, and 62-14; and AF Letter 45-6. In addition to the established procedure for handling and releasing classified information, there are additional safeguards necessary for aircraft accident information. Acci-

dent investigations are not conducted under the 70th Article of War. Aircraft accident information is procured from reports of personnel who have waived their rights under the 24th Article of War in the interest of accident prevention upon the assurance that the reports will not be used in any manner in connection with any investigation or proceeding toward disciplinary action, determination of pecuniary liability, or line-of-duty status or reclassification.

3. *Purpose.* Since certain facts have been accumulated as a result of aircraft accident investigation; it is convenient in many instances to abstract data from these reports for purposes other than the prevention of accidents. This violates the purpose for which the information was accumulated. The purpose of this Regulation is to limit the uses of accident information to accident prevention and such additional uses as authorized in this Regulation.

4. *Handling of Aircraft Accident Information within the Authorized Chain of Command:*

a. Reports of boards of officers, special accident reports, or extracts therefrom will not be furnished or made available to persons outside the authorized chain of command without the specific approval of the Secretary of the Air Force.

b. All aircraft accident data (reports, statistics, studies, publications, etc.) will be classified no lower than *Restricted*.

Higher classification is governed by AF Regulation 62-14.

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5. *Release of Aircraft Accident Information:*

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b. Reports of boards of officers, special accident reports, or extracts therefrom will not be furnished or made available to persons outside the authorized chain of command without the specific approval of the Secretary of the Air Force.

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g. * * * (1) Manufacturers' representatives who are stationed with Air Force organizations to assist in solving maintenance and operational problems of products manufactured by the organizations they represent are to be given full access to the scene of any and all accidents involving such products and to all information concerning such accident that may be obtained by the Air Force except the official written reports of investigations or extracts therefrom.

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6. *Responsibility:*

a. Responsibility for the release of reports of boards of officers, special accident reports, or extracts therefrom regarding aircraft accidents to persons outside the authorized chain of command or

administration will rest solely with the Secretary of the Air Force.

8. Joint Army and Air Force Adjustment Regulations No. 1-11-60.

JAAFAR 1-11-60

1-2

Departments of the Army and the Air Force
Washington 25, D. C., 11 May 1949

ORGANIZATION

TRANSFER OF FUNCTIONS, POWERS, AND DUTIES
RELATING TO CLAIMS AND LITIGATION

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7. Administrative instructions.—Implementation of transfers contained herein will result in appropriate amendments to all existing directives during normal revision cycle. Until such time as these directives are revised or new publications issued, all references to the Secretary of War (Secretary of the Army) and the War Department (Department of the Army) will, for matters pertaining to the Department of the Air Force, be construed to refer equally to the Secretary of the Air Force and the Department of the Air Force.

9. Army Regulations No. 420-5

AR 420-5

1-5

War Department, Washington, May 20, 1940

BOARDS OF OFFICERS FOR CONDUCTING INVESTIGATIONS

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SECTION V

REPORTS OF PROCEEDINGS

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29. Copies of reports.—A board is not authorized to furnish copies of its reports to anyone other than the authority directing the investigation or his duly appointed representative. (See par. 18). Final decision as to furnishing reports or extracts therefrom to persons other than officials authorized by the chain of command or administration to receive them rests with the Secretary of War. (See par. 11d, AR 35-7020; Dig. Op. JAG, 1912, p. 828; and Dig. Op. JAG 1912-30, sec. 994.)